clearly specified purposes, and the will of the agent rather than the will of the sultan is to prevail.

THE BRAZILIAN COFFEE CASE

In a very important case, involving 950,000 bags of coffee, claimed to be the property of the State of San Paulo of the Republic of Brazil, the United States prayed, in its petition under the Sherman Anti-Trust Act, for an injunction, refused by the District Court for the Southern District of New York, for "an immediate seizure of all coffee now in the possession of the warehouse company belonging to the State of San Paulo, Brazil," in order to turn it over "to a receiver to be appointed by the court, with instructions to sell it from time to time as the court might direct." This particular form of relief was disclaimed on the argument. The temporary relief which the bill asks for, to quote the language of the court, "is an injunction (continued till final hearing on decree) which will finally impound this coffee so that the owner can not sell it to anybody in this country at any price, can not ship it abroad and sell it there, should a satisfactory price be obtainable, and can not even return it to the place whence it came."

In denying the temporary relief, Circuit Justice Lacomb, speaking for the court, said:

> No provision is proffered for making good to the owner any loss it might sustain in consequence of such impounding of the property, should the plaintiff fail to make good its contentions on final hearing, probably many months hence.
>
> The numerous issues of fact and law, which have been referred to on the hearing, present important questions and contain too many elements of uncertainty to be decided summarily in advance of the trial. They may with greater propriety be disposed of when the testimony shall disclose the exact facts.
>
> We are not persuaded by anything in the papers submitted that there is any reason to apprehend that in the interim there will be such changes in the situation as will injuriously affect the position of the government.

For these reasons the preliminary injunction prayed for by the government was denied.

The petition of the government sets forth that 950,000 bags of coffee were "purchased by the agents of the State of San Paulo," most of which is held "elsewhere than in the United States." It sets up the fact that the defendant, one Herman Sielcken, is a resident of the Southern District of New York; that he is the agent of the committee formed to

purchase and to control the coffee of the State of San Paulo; and that he has in his possession and control in the warehouse of the New York Dock Company on Long Island the coffee shipped to the United States under the directions of the foreign committee, of which he is a member. It is charged by the government that the action of the committee in purchasing large quantities of coffee outside of the United States and selling in New York the portion of the coffee allotted to the United States constitutes a conspiracy under the Anti-Trust Law of 1890, and prays for an injunction, as briefly stated in the decision of the court already quoted.

In this statement of the case there are two points of very considerable interest to international lawyers. First, whether the provisions of the Anti-Trust Act of July 2, 1890, apply to transactions which have taken place outside of the jurisdiction of the United States; and second, whether property in the United States admitted to belong to a foreign government, or its agents, can properly be made the object of legal proceedings. It is admitted in the petition that the purchase of the coffee and its storing by the committee, in order to regulate its price, is not illegal by the laws of Brazil (Petition of the United States, p. 31). It is maintained, however, that the execution in the United States of the agreement constitutes a conspiracy under the Act of July 2, 1890. The applicability of the Anti-Trust Act, so as to make the transactions, which admittedly took place in Brazil, a conspiracy under the provisions of the Sherman Act, has been passed upon by the Supreme Court of the United States in the *American Banana Company* v. *United Fruit Company* (213 U. S. 348), the head-note to which reads:

> While a country may treat some relations between its own citizens as governed by its own law in regions subject to no sovereign, like the high seas, or to no law recognized as adequate, the general rule is that the character of an act as lawful or unlawful must be determined wholly by the law of the country where it is done; that a statute will, as a general rule, be construed as intended to be confined in its operation and effect to the territorial limits within the jurisdiction of the lawmaker, and words of universal scope will be construed as meaning only those subject to the legislation; that the prohibition of the Sherman Anti-Trust law does not extend to acts done in foreign countries, even though done by citizens of the United States and injuriously affecting other citizens of the United States; that sovereignty means that the decree of the sovereign makes law and foreign courts cannot condemn the influences persuading the sovereign to make the decree; and that a conspiracy in this country to do acts in another jurisdiction does not draw to itself those acts and make them unlawful if they are permitted by the local law.

The decision in this case is so important as to justify quotation from the opinion of the court. Thus it is said:

> The general and almost universal rule is that the character of an act as lawful or unlawful must be determined wholly by the law of the country where the act is done.
>
> And the court states this and other considerations as leading in case of doubt "to a construction of any statute as intended to be confined in its operation and effect to the territorial limits over which the lawmaker has general and legitimate power." All legislation is *prima facie* territorial. Words having universal scope, such as 'Every contract in restraint of trade,' 'Every person who shall monopolize,' etc., will be taken as a matter of course to mean only every one subject to such legislation, not all that the legislator subsequently may be able to catch. In the case of the present statute the improbability of the United States attempting to make acts done in Panama or Costa Rica criminal is obvious, yet the law begins by making criminal the acts for which it gives a right to sue. We think it entirely plain that what the defendant did in Panama or Costa Rica is not within the scope of the statute so far as the present suit is concerned.
>
> For again, not only were the acts of the defendant in Panama or Costa Rica not within the Sherman Act, but they were not torts by the law of the place, and therefore were not torts at all, however contrary to the ethical and economic postulates of that statute. The substance of the complaint is that, the plantation being within the *de facto* jurisdiction of Costa Rica, that state took and keeps possession of it by virtue of its sovereign power. But a seizure by a state is not a thing that can be complained of elsewhere in the courts. The fact, if it be one, that *de jure* the estate is in Panama does not matter in the least; sovereignty is pure fact. The fundamental reason why persuading a sovereign power to do this or that cannot be a tort is not that the sovereign cannot be joined as a defendant or because it must be assumed to be acting lawfully. The fundamental reason is that it is a contradiction in terms to say that within its jurisdiction it is unlawful to persuade a sovereign power to bring about a result that it declares by its conduct to be desirable and proper. It does not, and foreign courts cannot, admit that the influences were improper or the results bad. It makes the persuasion lawful by its own act. The very meaning of sovereignty is that the decree of the sovereign makes law.

It seems to be evident, therefore, that, whether or not the actions of San Paulo would constitute a conspiracy under the Sherman Act, if the same acts had been consummated in the United States, the Sherman Act can not be extended beyond the jurisdiction of the United States so as to make unlawful according to its provisions what was lawful according to the laws of Brazil. Whether or not the 950,000 bags of coffee, or any part thereof within the United States, can be seized or sold, would seem to depend upon the question whether or not property in the United States belonging to a foreign state is subject to judicial process within the United States. It is a familiar doctrine of international law

that a foreign state or sovereign can not be sued without its or his consent, and that property belonging to the sovereign is likewise exempt from suit, even although such property may be engaged in trade. (*De Haber* v. *Queen of Portugal*, 1851, 17 Queen's Bench, 196; *Vavasseur* v. *Krupp*, 1878, L. R. 9, Chancery Div. 351; *Le Parlement Belge*, 1878, L. R. 5, Probate Div. 197.)

In the case of the *Parlement Belge*, it was insisted that the immunity from suit was lost by having been used for trading purposes, upon which the court said:

> As to this, it must be maintained either that the ship has been so used as to have been employed substantially as a mere trading ship and not substantially for national purposes, or that a use of her in part for trading purposes takes away the immunity, although she is in possession of the sovereign authority by the hands of commissioned officers, and is substantially in use for national purposes. Both these propositions raise the question of how the ship must be considered to have been employed.
>
> As to the first, the ship has been by the sovereign of Belgium, by the usual means, declared to be in his possession as sovereign, and to be a public vessel of the state. It seems very difficult to say that any court can inquire by contentious testimony whether that declaration is or is not correct. To submit to such an inquiry before the court is to submit to its jurisdiction. It has been held that if the ship be declared by the sovereign authority by the usual means to be a ship of war, that declaration cannot be inquired into. That was expressly decided under very trying circumstances in the case of the *Exchange*. Whether the ship is a public ship used for national purposes seems to come within the same rule. But if such an inquiry could properly be instituted it seems clear that in the present case the ship has been mainly used for the purpose of carrying the mails, and only subserviently to that main object for the purposes of trade. The carrying of passengers and merchandise has been subordinated to the duty of carrying the mails. The ship is not, in fact, brought within the first proposition. As to the second, it has been frequently stated that an independent sovereign cannot be personally sued, although he has carried on a private trading adventure. It has been held that an ambassador cannot be personally sued, although he has traded; and in both cases because such a suit would be inconsistent with the independence and equality of the state which he represents. If the remedy sought by an action *in rem* against public property is, as we think it is, an indirect mode of exercising the authority of the court against the owner of the property, then the attempt to exercise such an authority is an attempt inconsistent with the independence and equality of the state which is represented by such owner. The property cannot, upon the hypothesis, be denied to be public property; the case is within the terms of the rule; it is within the spirit of the rule; therefore, we are of opinion that the mere fact of the ship being used subordinately and partially for trading purposes does not take away the general immunity. For all these reasons, we are unable to agree with the learned judge, and have come to the conclusion that the judgment must be reversed.

The case of the *Exchange* (1812, 7 Cranch, 116), referred to in the portion of the judgment just quoted, is universally considered as the leading authority on the immunity from suit of property belonging to sovereigns. The opinion of Chief Justice Marshall in this case is too well known to justify quotation, and it is believed that its reasoning, coupled with the judgments in the cases previously cited, forbids interference through judicial process with property belonging to a foreign state, and the coffee in question is stated by the court to belong to a foreign state.

The theory and practice of nations do not go to the extent of rendering sovereigns unaccountable for their actions in withdrawing them from the jurisdiction of courts of justice. The channels of diplomacy are open, though the courts be closed, as was admirably stated by Mr. Pinkney *arguendo* in the case of the *Exchange*. Thus he said, "When wrongs are inflicted by one nation upon another in tempestuous times, they cannot be redressed by the judicial department. Its powers cannot extend beyond the territorial jurisdiction. * * * The right to demand redress belongs to the executive department, which alone represents the sovereignty of the nation in its intercourse with other nations."

The final decision of the District Court upon trial of the case of the *United States of America* v. *Herman Sielcken, et al.*, will be looked upon with more than common interest, for, unless precedents are rejected, or the circumstances of the present case are distinguished from them, the success of the government would seem to be inconsistent with hitherto recognized principles of international law.

THE CLOSING AND REOPENING OF THE DARDANELLES

The recent action of Turkey in closing, and then after a short period, reopening the Dardanelles, recalls the somewhat anomalous position which those straits occupy in international law. The Dardanelles and the Bosphorus are Turkish territorial straits. The condition required to constitute territorial straits is that they shall be sufficiently narrow that navigation through them can be controlled by coast batteries erected either on one or both sides of them, and that the territory on both sides of them shall belong to the same country. They connect the Mediterranean Sea, about which there has never been any question as to its international character, and the Black Sea, which has only within the last century and a half become international.